

By: Patrick, Paxton

S.B. No. 23

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas Equal Opportunity  
Scholarship Program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 29, Education Code, is amended by adding  
Subchapter N to read as follows:

SUBCHAPTER N. TEXAS EQUAL OPPORTUNITY SCHOLARSHIP PROGRAM

Sec. 29.551. DEFINITIONS. In this subchapter:

(1) "Certified organization" means an organization  
certified under Section 29.552.

(2) "Eligible student" means a student who meets the  
requirements of Section 29.559.

(3) "Opportunity scholarship" means a Texas Equal  
Opportunity Scholarship Program scholarship awarded under Section  
29.557.

(4) "Qualified nonpublic school" means a school that  
meets the requirements of Section 29.560.

Sec. 29.552. CERTIFICATION OF ORGANIZATIONS;  
ADMINISTRATION OF PROGRAM. (a) The comptroller may select and  
certify not more than three organizations that meet the eligibility  
requirements of Section 29.553 to administer the Texas Equal  
Opportunity Scholarship Program. The comptroller shall select and  
certify three geographically diverse organizations that the  
comptroller determines are likely to best administer the program

1 from among the eligible organizations that apply.

2 (b) A certified organization may accept donations and award  
3 opportunity scholarships in this state under the conditions and  
4 limitations provided by this subchapter.

5 Sec. 29.553. ELIGIBILITY REQUIREMENTS FOR ORGANIZATIONS  
6 APPLYING FOR CERTIFICATION. (a) An organization may apply to the  
7 comptroller for certification under Section 29.552.

8 (b) An organization is eligible for selection and  
9 certification by the comptroller if the organization:

10 (1) according to the organization's charter, has the  
11 primary purpose of awarding scholarships to or paying educational  
12 expenses for eligible students in public elementary or secondary  
13 schools located in this state;

14 (2) uses its annual revenue for the purpose provided  
15 by Subdivision (1), except for a portion of the revenue that may be  
16 used for reasonable operating expenses;

17 (3) is exempt from federal tax under Section 501(a),  
18 Internal Revenue Code of 1986, by being listed as an exempt  
19 organization in Section 501(c)(3) of that code and meeting all  
20 other applicable requirements for that exemption;

21 (4) is in good standing with this state;

22 (5) is located in this state;

23 (6) demonstrates, within the previous five-year  
24 period, experience and expertise in awarding scholarships to  
25 students in elementary and secondary schools; and

26 (7) agrees to be independently audited on an annual  
27 basis and file the audit report with the comptroller if certified.

1       Sec. 29.554. REQUIREMENTS FOR CERTIFIED ORGANIZATIONS. (a)

2       A certified organization shall:

3               (1) comply at all times with the eligibility  
4       requirements under Section 29.553(b);

5               (2) submit to an annual independent audit under  
6       guidelines provided by the comptroller and file the audit report  
7       with the comptroller;

8               (3) except as provided by Section 29.556(b),  
9       distribute all money received from donations under this subchapter  
10       within two school years of receipt;

11               (4) give each donor a receipt for money donated to the  
12       certified organization under this subchapter that includes the name  
13       of the certified organization, the name of the donor, the amount of  
14       the donation, and any other information required by the  
15       comptroller; and

16               (5) of the amount of money received from donations  
17       made by donors for the purpose of providing scholarships under this  
18       subchapter including all money donated by entities applying for a  
19       tax credit in connection with the donation under Chapter 230,  
20       Insurance Code, or Subchapter K, Chapter 171, Tax Code:

21                       (A) distribute not less than 95 percent in the  
22       form of opportunity scholarships; and

23                       (B) use not more than five percent to pay  
24       expenses of operating the organization.

25       (b) A certified organization may not:

26               (1) award all opportunity scholarships to students who  
27       attend a particular school; or

1           (2) provide opportunity scholarships in a manner that  
2 does not comply with Sections 29.556 and 29.557.

3           Sec. 29.555. REVOCATION OF CERTIFICATION. (a) The  
4 comptroller shall revoke a certification under Section 29.552 if  
5 the comptroller finds that a certified organization:

6           (1) is not in compliance with the requirements of  
7 Section 29.554; or

8           (2) otherwise intentionally and substantially  
9 violates this subchapter.

10          (b) Revocation of a certification under this section does  
11 not affect the validity of a tax credit under Chapter 230, Insurance  
12 Code, or Subchapter K, Chapter 171, Tax Code, relating to a donation  
13 made before the date of revocation.

14          Sec. 29.556. ALLOCATION OF OPPORTUNITY SCHOLARSHIP MONEY.

15          (a) Except as provided by Subsection (b), of a certified  
16 organization's money available to award opportunity scholarships  
17 for each school year, the certified organization shall use:

18           (1) not more than 80 percent to award opportunity  
19 scholarships under Section 29.557 to eligible students to attend  
20 qualified nonpublic schools in this state; and

21           (2) not more than 20 percent to award opportunity  
22 scholarships under Section 29.557 to eligible students to attend:

23            (A) tuition-supported prekindergarten programs  
24 at public schools in this state; or

25            (B) educational after-school programs, if the  
26 eligible students receiving the opportunity scholarships to attend  
27 after-school programs attend public schools in this state.

1       (b) If a certified organization awards the maximum  
2 opportunity scholarship to each eligible student described by  
3 Subsection (a)(1) or (2) who applies for a school year but does not  
4 award the maximum amount of the organization's money allowed by the  
5 applicable subdivision for the year, the certified organization  
6 shall carry forward the remaining money available under the  
7 applicable subdivision for the year and use the money to award  
8 opportunity scholarships to eligible students described by the  
9 applicable subdivision for subsequent school years.

10       Sec. 29.557. AWARD OF OPPORTUNITY SCHOLARSHIPS. (a) For  
11 each school year a certified organization shall award opportunity  
12 scholarships according to the allocations prescribed by Section  
13 29.556(a) to eligible students who apply as provided by this  
14 section.

15       (b) A certified organization shall award opportunity  
16 scholarships to applicants according to the following priority  
17 groups in the manner provided by Subsections (c) and (d):

18               (1) the certified organization shall give first  
19 priority to applicants, and the siblings of those applicants, who  
20 were awarded an opportunity scholarship by the certified  
21 organization for the current school year and who are applying to  
22 renew the opportunity scholarship for the next school year;

23               (2) the certified organization shall give second  
24 priority to applicants who currently attend a campus that is  
25 assigned a performance rating of unacceptable performance under  
26 Section 39.054; and

27               (3) the certified organization shall give third

1 priority to all other applicants.

2 (c) A certified organization may not award an opportunity  
3 scholarship to an applicant in the priority group described by  
4 Subsection (b)(2) for a school year unless the certified  
5 organization awards an opportunity scholarship to each eligible  
6 student in the priority group described by Subsection (b)(1) who  
7 applies for that year. A certified organization may not award an  
8 opportunity scholarship to an applicant in the priority group  
9 described by Subsection (b)(3) for a school year unless the  
10 certified organization awards an opportunity scholarship to each  
11 eligible student in the priority groups described by Subsections  
12 (b)(1) and (2) who apply for that year.

13 (d) If a certified organization is able to award an  
14 opportunity scholarship to one or more, but not all, eligible  
15 students in a priority group described by Subsection (b) who apply,  
16 the certified organization shall use a lottery system to award  
17 opportunity scholarships to eligible students in that group who  
18 apply.

19 Sec. 29.558. LIMITATION ON AMOUNTS OF OPPORTUNITY  
20 SCHOLARSHIPS. (a) The amount of an opportunity scholarship awarded  
21 for a school year to a student to attend a qualified nonpublic  
22 school or a tuition-supported prekindergarten program at a public  
23 school may not exceed the amount of funding equal to 80 percent of  
24 the statewide average amount of state and local funding provided to  
25 school districts under Chapter 42 for a student in average daily  
26 attendance.

27 (b) The amount of an opportunity scholarship awarded for a

1 school year to a student to attend an educational after-school  
2 program may not exceed \$1,000.

3 Sec. 29.559. ELIGIBILITY OF STUDENTS. (a) A student is  
4 eligible for an opportunity scholarship if:

5 (1) resides in the state of Texas;

6 (2) attended a public school for the majority of a  
7 preceding year; and either

8 (A) is at risk of dropping out of school as  
9 defined in Section 29.081; or,

10 (B) resides in a household that had, in the  
11 household's most recently filed federal income tax return, a  
12 household income not greater than 200 percent of the income  
13 guidelines necessary to qualify for the national free or  
14 reduced-price lunch program established under 42 U.S.C. Section  
15 1751 et seq.

16 (b) A child who establishes eligibility under Subsection  
17 (a) is entitled to continue participating until the earlier of the  
18 date on which the child graduates from high school or the child's  
19 21st birthday.

20 Sec. 29.560. NONPUBLIC SCHOOL REQUIREMENTS. (a) A  
21 certified organization may not award an opportunity scholarship for  
22 a student to attend a nonpublic school unless the nonpublic school:

23 (1) is accredited by an organization that is  
24 recognized by the Texas Private School Accreditation Commission;

25 (2) annually administers a nationally norm-referenced  
26 assessment instrument or each appropriate assessment instrument  
27 required under Section 39.023;

1           (3) qualifies as a school at which a student may  
2 fulfill this state's compulsory attendance requirements;

3           (4) is not in violation of the federal Civil Rights Act  
4 of 1964 (42 U.S.C. Section 2000a et seq.);

5           (5) holds a valid certificate of occupancy; and

6           (6) has written policy statements regarding:

7                   (A) admissions;

8                   (B) curriculum;

9                   (C) safety;

10                  (D) food service inspection; and

11                  (E) student to teacher ratios.

12           (b) A nonpublic school that enrolls or accepts for  
13 enrollment a student who applies for or is awarded an opportunity  
14 scholarship shall provide to the certified organization to which  
15 the student applies or that awards the opportunity scholarship a  
16 notarized affidavit, with supporting documents, showing that the  
17 nonpublic school meets the requirements of Subsection (a).

18           Sec. 29.561. RULES; PROCEDURES. (a) The comptroller shall  
19 adopt rules and procedures to implement, administer, and enforce  
20 this subchapter.

21           (b) A rule adopted under Subsection (a) is binding on any  
22 state or local governmental entity, including a political  
23 subdivision, as necessary to implement, administer, and enforce  
24 this subchapter.

25           SECTION 2. Subtitle B, Title 3, Insurance Code, is amended  
26 by adding Chapter 230 to read as follows:

27           CHAPTER 230. CREDIT AGAINST PREMIUM TAXES

1 FOR DONATIONS TO TEXAS EQUAL OPPORTUNITY SCHOLARSHIP PROGRAM

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 230.001. DEFINITIONS. In this chapter:

4 (1) "Certified organization" has the meaning assigned  
5 by Section 29.551, Education Code.

6 (2) "State premium tax liability" means any liability  
7 incurred by an entity under Chapters 221 through 226.

8 SUBCHAPTER B. CREDIT

9 Sec. 230.051. ELIGIBILITY. An entity is eligible for a  
10 credit against the entity's state premium tax liability in the  
11 amount and under the conditions and limitations provided by this  
12 chapter.

13 Sec. 230.052. AMOUNT OF CREDIT; LIMITATION ON RETURN OF  
14 CREDIT. (a) The amount of the credit is equal to the lesser of the  
15 amount of donations made to a certified organization or fifteen  
16 percent of the entity's state premium tax liability after applying  
17 any other applicable credits.

18 (b) An entity is not entitled to have a donation to a  
19 certified organization returned because of a change in the entity's  
20 state premium tax liability or in the amount of the entity's tax  
21 credit allowed under this chapter as a result of a federal or state  
22 audit, assessment, redetermination, amended return, or similar  
23 change in the entity's tax liability. The certified organization to  
24 which an entity makes a donation shall notify the entity of this  
25 provision.

26 Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must  
27 apply for a credit under this chapter on or with the tax return for

1 the taxable year for which the credit is claimed.

2 (b) The comptroller shall adopt a form for the application  
3 for the credit. An entity must use this form in applying for the  
4 credit. The comptroller shall make the form available in electronic  
5 and paper format in the same manner as other tax forms.

6 Sec. 230.054. RULES; PROCEDURES. (a) The comptroller  
7 shall adopt rules and procedures to implement, administer, and  
8 enforce this chapter.

9 (b) A rule adopted under Subsection (a) is binding on any  
10 state or local governmental entity, including a political  
11 subdivision, as necessary to implement, administer, and enforce  
12 this chapter.

13 Sec. 230.055. ASSIGNMENT PROHIBITED; EXCEPTION. An entity  
14 may not convey, assign, or transfer the credit allowed under this  
15 chapter to another entity unless all of the assets of the entity are  
16 conveyed, assigned, or transferred in the same transaction.

17 SECTION 3. Chapter 171, Tax Code, is amended by adding  
18 Subchapter K to read as follows:

19 SUBCHAPTER K. TAX CREDIT FOR DONATIONS TO TEXAS EQUAL OPPORTUNITY  
20 SCHOLARSHIP PROGRAM

21 Sec. 171.601. DEFINITION. In this subchapter, "certified  
22 organization" has the meaning assigned by Section 29.551, Education  
23 Code.

24 Sec. 171.602. ENTITLEMENT TO CREDIT. A taxable entity is  
25 entitled to a credit in the amount and under the conditions and  
26 limitations provided by this subchapter against the tax imposed  
27 under this chapter.

1       Sec. 171.603. QUALIFICATION. A taxable entity qualifies  
2 for a credit under this subchapter if the taxable entity donates  
3 money to a certified organization.

4       Sec. 171.604. AMOUNT OF CREDIT; LIMITATION ON RETURN OF  
5 CREDIT. (a) The amount of the credit is equal to the lesser of the  
6 amount of donations made to a certified organization during the  
7 privilege period or fifteen percent of the amount of franchise tax  
8 due, after applying any other applicable credits.

9       (b) A taxable entity is not entitled to have a donation  
10 returned because of a change in the taxable entity's tax liability  
11 under this chapter or in the amount of the taxable entity's tax  
12 credit allowed under this subchapter as a result of a federal or  
13 state audit, assessment, redetermination, amended return, or  
14 similar change in the taxable entity's tax liability. The certified  
15 organization to which a taxable entity makes a donation shall  
16 notify the taxable entity of this provision.

17       Sec. 171.605. APPLICATION FOR CREDIT. (a) A taxable entity  
18 must apply for a credit under this subchapter on or with the tax  
19 report for the period for which the credit is claimed.

20       (b) The comptroller shall adopt a form for the application  
21 for the credit. A taxable entity must use this form in applying for  
22 the credit. The comptroller shall make the form available in  
23 electronic and paper format in the same manner as other tax forms.

24       Sec. 171.606. RULES; PROCEDURES. (a) The comptroller  
25 shall adopt rules and procedures to implement, administer, and  
26 enforce this subchapter.

27       (b) A rule adopted under Subsection (a) is binding on any

1 state or local governmental entity, including a political  
2 subdivision, as necessary to implement, administer, and enforce  
3 this subchapter.

4 Sec. 171.607. ASSIGNMENT PROHIBITED; EXCEPTION. A taxable  
5 entity may not convey, assign, or transfer the credit allowed under  
6 this subchapter to another taxable entity unless all assets of the  
7 taxable entity are conveyed, assigned, or transferred in the same  
8 transaction.

9 SECTION 4. (a) The constitutionality and other validity  
10 under the state or federal constitution of all or any part of  
11 Subchapter N, Chapter 29, Education Code, Chapter 230, Insurance  
12 Code, or Subchapter K, Chapter 171, Tax Code, as added by this Act,  
13 may be determined in an action for declaratory judgment in a  
14 district court in Travis County under Chapter 37, Civil Practice  
15 and Remedies Code.

16 (b) An appeal of a declaratory judgment or order, however  
17 characterized, of a district court, including an appeal of the  
18 judgment of an appellate court, holding or otherwise determining  
19 that all or any part of Subchapter N, Chapter 29, Education Code,  
20 Chapter 230, Insurance Code, or Subchapter K, Chapter 171, Tax  
21 Code, as added by this Act, is constitutional or unconstitutional,  
22 or otherwise valid or invalid, under the state or federal  
23 constitution is an accelerated appeal.

24 (c) If the judgment or order is interlocutory, an  
25 interlocutory appeal may be taken from the judgment or order and is  
26 an accelerated appeal.

27 (d) A district court in Travis County may grant or deny a

1 temporary or otherwise interlocutory injunction or a permanent  
2 injunction on the grounds of the constitutionality or  
3 unconstitutionality, or other validity or invalidity, under the  
4 state or federal constitution of all or any part of Subchapter N,  
5 Chapter 29, Education Code, Chapter 230, Insurance Code, or  
6 Subchapter K, Chapter 171, Tax Code, as added by this Act.

7 (e) There is a direct appeal to the supreme court from an  
8 order, however characterized, of a trial court granting or denying  
9 a temporary or otherwise interlocutory injunction or a permanent  
10 injunction on the grounds of the constitutionality or  
11 unconstitutionality, or other validity or invalidity, under the  
12 state or federal constitution of all or any part of Subchapter N,  
13 Chapter 29, Education Code, Chapter 230, Insurance Code, or  
14 Subchapter K, Chapter 171, Tax Code, as added by this Act.

15 (f) The direct appeal is an accelerated appeal.

16 (g) This section exercises the authority granted by Section  
17 3-b, Article V, Texas Constitution.

18 (h) The filing of a direct appeal under this section will  
19 automatically stay any temporary or otherwise interlocutory  
20 injunction or permanent injunction granted in accordance with this  
21 section pending final determination by the supreme court, unless  
22 the supreme court makes specific findings that the applicant  
23 seeking such injunctive relief has pleaded and proved that:

24 (1) the applicant has a probable right to the relief it  
25 seeks on final hearing; and

26 (2) the applicant will suffer a probable injury that  
27 is imminent and irreparable, and that the applicant has no other

1 adequate legal remedy.

2 (i) An appeal under this section, including an  
3 interlocutory, accelerated, or direct appeal, is governed, as  
4 applicable, by the Texas Rules of Appellate Procedure, including  
5 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),  
6 38.6(a) and (b), 40.1(b), and 49.4.

7 SECTION 5. A credit may be claimed under Chapter 230,  
8 Insurance Code, or Subchapter K, Chapter 171, Tax Code, as added by  
9 this Act, only for a donation made on or after January 1, 2014.

10 SECTION 6. Subchapter N, Chapter 29, Education Code, as  
11 added by this Act, applies beginning with the 2013-2014 school  
12 year.

13 SECTION 7. (a) Except as provided by Subsection (b) of this  
14 section:

15 (1) this Act takes effect immediately if it receives a  
16 vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution; and

18 (2) if this Act does not receive the vote necessary for  
19 immediate effect, this Act takes effect September 1, 2013.

20 (b) Chapter 230, Insurance Code, and Subchapter K, Chapter  
21 171, Tax Code, as added by this Act, take effect January 1, 2014.